

Calendar No. 347

104TH CONGRESS  
2D Session

**S. 1618**

**A BILL**

To provide uniform standards for the award of  
punitive damages for volunteer services.

MARCH 15, 1996

Read the second time and placed on the calendar

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## IN THE SENATE OF THE UNITED STATES

MARCH 14 (legislative day, MARCH 13), 1996

Mr. ABRAHAM for Mr. DOLE (for himself and Mr. HATCH) introduced the following bill; which was read the first time

MARCH 15, 1996

Read the second time and placed on the calendar

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## A BILL

To provide uniform standards for the award of punitive damages for volunteer services.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. UNIFORM STANDARDS FOR AWARD OF PUNI-**  
4 **TIVE DAMAGES.**

5 (a) GENERAL RULE.—Punitive damages may, to the  
6 extent permitted by applicable State law, be awarded  
7 against a defendant if the claimant establishes by clear

1 and convincing evidence that conduct carried out by the  
 2 defendant with a conscious, flagrant indifference to the  
 3 rights or safety of others was the proximate cause of the  
 4 harm that is the subject of the action—

5 (1) in any civil action where the claim relates  
 6 to volunteer services performed by the defendant for  
 7 a government entity or a not for profit organization  
 8 organized and conducted for public benefit and oper-  
 9 ated primarily for charitable, civic, educational, reli-  
 10 gious, welfare, or health purposes; or

11 (2) in any civil action where the claim relates  
 12 to activities or services performed by a not for profit  
 13 organization organized and conducted for public ben-  
 14 efit and operated primarily for charitable, civic, edu-  
 15 cational, religious, welfare, or health purposes, not  
 16 including health care providers.

17 (b) LIMITATION ON AMOUNT.—

18 (1) IN GENERAL.—The amount of punitive  
 19 damages that may be awarded in an action described  
 20 in subsection (a) may not exceed the greater of—

21 (A) 2 times the sum of the amount award-  
 22 ed to the claimant for economic loss and non-  
 23 economic loss; or

24 (B) \$250,000.

1           (2) SPECIAL RULE.—Notwithstanding para-  
 2 graph (1), in any action described in section (a)  
 3 against an individual whose net worth does not ex-  
 4 ceed \$500,000 or against an owner of an unincor-  
 5 porated business, or any partnership, corporation,  
 6 association, congregation, unit of local government,  
 7 or organization which has fewer than 25 full-time  
 8 employees, the punitive damages shall not exceed the  
 9 lesser of—

10                   (A) 2 times the sum of the amount award-  
 11 ed to the claimant for economic loss and non-  
 12 economic loss; or

13                   (B) \$250,000.

14           (3) EXCEPTION FOR PARTICULAR CATEGORIES  
 15 OF MISCONDUCT.—The limitations on the amount of  
 16 punitive damages contained in paragraphs (1) and  
 17 (2) shall not apply in any action described in sub-  
 18 section (a)(1) or (a)(2) where the misconduct for  
 19 which punitive damages are awarded—

20                   (A) constitutes a crime of violence (as that  
 21 term is defined in section 16 of title 18, United  
 22 States Code) or act of international terrorism  
 23 (as that term is defined in section 2331 of title  
 24 18) for which the defendant has been convicted  
 25 in any court;

1 (B) constitutes a hate crime (as that term  
 2 is used in the Hate Crime Statistics Act (28  
 3 U.S.C. 534 note));

4 (C) involves a sexual offense, as defined by  
 5 applicable State law, for which the defendant  
 6 has been convicted in any court;

7 (D) involves misconduct for which the de-  
 8 fendant has been found to have violated a Fed-  
 9 eral or State civil rights law; or

10 (E) where the defendant was under the in-  
 11 fluence (as determined pursuant to applicable  
 12 State law) of intoxicating alcohol or any drug,  
 13 as defined in section 104(b)(2) of this title, at  
 14 the time of the misconduct for which punitive  
 15 damages are awarded.

16 (4) EXCEPTION FOR INSUFFICIENT AWARD IN  
 17 CASES OF EGREGIOUS CONDUCT.—

18 (A) DETERMINATION BY COURT.—If the  
 19 court makes a determination, after considering  
 20 each of the factors in subparagraph (B), that  
 21 the application of paragraph (1) would result in  
 22 an award of punitive damages that is insuffi-  
 23 cient to punish the egregious conduct of the de-  
 24 fendant against whom the punitive damages are  
 25 to be awarded or to deter such conduct in the

1 future, the court shall determine the additional  
2 amount of punitive damages (referred to in this  
3 paragraph as the “additional amount”) in ex-  
4 cess of the amount determined in accordance  
5 with paragraph (1) to be awarded against the  
6 defendant in a separate proceeding in accord-  
7 ance with this paragraph.

8 (B) FACTORS FOR CONSIDERATION.—In  
9 any proceeding under paragraph (A), the court  
10 shall consider—

11 (i) the extent to which the defendant  
12 acted with actual malice;

13 (ii) the likelihood that serious harm  
14 would arise from the conduct of the de-  
15 fendant;

16 (iii) the degree of the awareness of  
17 the defendant of that likelihood;

18 (iv) the profitability of the misconduct  
19 to the defendant;

20 (v) the duration of the misconduct  
21 and any concurrent or subsequent conceal-  
22 ment of the conduct by the defendant;

23 (vi) the attitude and conduct of the  
24 defendant upon the discovery of the mis-

1           conduct and whether the misconduct has  
2           terminated;

3                 (vii) the financial condition of the de-  
4           fendant; and

5                 (viii) the cumulative deterrent effect  
6           of other losses, damages, and punishment  
7           suffered by the defendant as a result of the  
8           misconduct, reducing the amount of puni-  
9           tive damages on the basis of the economic  
10          impact and severity of all measures to  
11          which the defendant has been or may be  
12          subjected, including—

13                         (I) compensatory and punitive  
14                         damage awards to similarly situated  
15                         claimants;

16                         (II) the adverse economic effect  
17                         of stigma or loss of reputation;

18                         (III) civil fines and criminal and  
19                         administrative penalties; and

20                         (IV) stop sale, cease and desist,  
21                         and other remedial or enforcement or-  
22                         ders.

23                         (C) REQUIREMENTS FOR AWARDING ADDI-  
24           TIONAL AMOUNT.—If the court awards an addi-  
25           tional amount pursuant to this subsection, the

1 court shall state its reasons for setting the  
2 amount of the additional amount in findings of  
3 fact and conclusions of law.

4 (D) PREEMPTION.—This section does not  
5 create a cause of action for punitive damages  
6 and does not preempt or supersede any State or  
7 Federal law to the extent that such law would  
8 further limit the award of punitive damages.  
9 Nothing in this subsection shall modify or re-  
10 duce the ability of courts to order remittiturs.

11 (5) APPLICATION BY COURT.—This subsection  
12 shall be applied by the court and application of this  
13 subsection shall not be disclosed to the jury. Nothing  
14 in this subsection shall authorize the court to enter  
15 an award of punitive damages in excess of the jury's  
16 initial award of punitive damages.

17 (c) BIFURCATION AT REQUEST OF ANY PARTY.—

18 (1) IN GENERAL.—At the request of any party  
19 the trier of fact in any action that is subject to this  
20 section shall consider in a separate proceeding, held  
21 subsequent to the determination of the amount of  
22 compensatory damages, whether punitive damages  
23 are to be awarded for the harm that is the subject  
24 of the action and the amount of the award.



1           (2) INADMISSIBILITY OF EVIDENCE RELATIVE  
2 ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A PRO-  
3 CEEDING CONCERNING COMPENSATORY DAMAGES.—

4 If any party requests a separate proceeding under  
5 paragraph (1), in a proceeding to determine whether  
6 the claimant may be awarded compensatory dam-  
7 ages, any evidence, argument, or contention that is  
8 relevant only to the claim of punitive damages, as  
9 determined by applicable State law, shall be inadmis-  
10 sible.

11 (d) DEFINITION.—

12 HEALTH CARE PROVIDER.—The term “health  
13 care provider” means any person, organization, or  
14 institution that is engaged in the delivery of health  
15 care services in a State and that is required by the  
16 laws or regulations of the State to be licensed, reg-  
17 istered, or certified by the State to engage in the de-  
18 livery of such services in the State.